

DRAFT

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MEMORANDUM FOR : General Counsel

STAT FROM :
Chairman, Secrecy Agreement
Review Group

SUBJECT : Proposed New Secrecy Agreement and
Administrative Procedures

REFERENCE : OGC 78-4618, 14 July 1978, Subject:
Review of Agency Secrecy Agreements

1. In July of this year, you established a working group of Agency representatives to undertake a comprehensive review of the contents and administration of Agency secrecy agreements. You indicated to the group that there were four principal areas of concern to you - the reasonableness of the obligations contained in the present agreements, the clarity with which they are expressed, the means by which the Agency applies the procedures called for in the agreements, and the types of sanctions which are (and are not) contained in these agreements.

2. In response thereto, the group has developed a new secrecy agreement and has identified several new procedures associated with the administration of secrecy agreements or with the nondisclosure policies behind them.

3. Attachment 1 contains the text of the proposed new secrecy agreement. Attachment 2 is a second copy of the agreement with the group's explanatory comments attached. Attachment 3 is a copy of the present EOD secrecy agreement.

4. The group is sharply divided on several issues concerning the secrecy agreement. These are the treatment of intelligence sources and methods vis-a-vis classified information, whether to include a "whistle-blower" clause in the agreement, and whether to include an assignment-of-royalties clause. As it is presently drawn, the proposed agreement treats intelligence sources and methods as a category of information distinct from classified information; does not include a whistle-blower clause, and does not contain an assignment-of-royalties clause. The rationale concerning the classified information/intelligence sources"

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and methods issue and the assignment-of-royalties issue are lengthy. They are set out in Attachment 2. As for the whistle-blower clause, a majority of the group believes that the time has come for the Agency to put behind itself the appearance of preconceived guilt and self-denigration to which such a clause would contribute. A majority also believes that the whistle-blower channels are already adequately publicized.

5. General comments concerning the agreement and the proposed new administrative procedures are as follows.

SECRECY AGREEMENT

6. The proposed secrecy agreement represents an attempt to develop a single entrance-on-duty agreement which is applicable to as many different Agency and DCI requirements as possible. It is based upon a compensatory relationship between the individual and the Agency. While it will serve most Agency applications, it will not serve all.

7. The agreement is cast in an active tone of voice. To the greatest extent possible, it does not contain recitations of fact, but is written in terms whereby the person who is to sign it is indicating agreement, understanding or acceptance in each clause. It utilizes simpler language than does the present agreement.

8. The agreement does not differentiate between present employees and ex-employees, insofar as the materials which must be submitted for Agency review are concerned. Materials concerning intelligence-oriented topics or which might be otherwise based upon classified information must be submitted by both groups. Materials concerning other topics are not required to be submitted by either.

9. The agreement makes only brief mention of sanctions. The group concluded that the only sanctions which can be imposed predictably are the administrative sanctions which the Agency can direct against a present employee. While civil or criminal penalties are possible consequences of violating the agreement, the likelihood that they will be imposed is quite uncertain. The agreement does not require that the person read (and presumably understand) the espionage laws. Rather, the person is simply informed that certain unauthorized disclosures constitute a criminal offense.

10. The concept of "consideration" is set forth specifically to help emphasize that this is a contractual undertaking.

11. The basic nondisclosure language has been broadened to take account of any means of disclosure.

12. The agreement places more emphasis than does the present one on what constitutes an authorized disclosure and who constitutes an authorized recipient.

13. The requirement that the person signing the agreement represent that he or she does so without mental reservation has been eliminated. The group concluded that most persons are not so insensitive as to experience no reservations about the obligations being undertaken. A representation of good faith has been substituted.

14. A severability clause has been added.

ADMINISTRATIVE PROCEDURES

15. The group unanimously recommends the adoption of these three administrative procedures. First, it is recommended that prospective applicants be provided with a copy of the Agency secrecy agreement early in the application process. This would give the applicant the opportunity to contemplate the obligations which must be undertaken at a time when the applicant has not yet become committed to a course of action. With the Agency's present procedure, the applicant does not learn any details of the secrecy agreement until he or she has reported for duty. By this time the applicant is usually irreversibly committed to the course of Agency employment and a meaningful choice, when confronted with the requirement to execute the secrecy agreement, does not really exist.

16. Next the group recommends that an appeal procedure similar to that available to Freedom of Information requesters be established within the Agency to permit appeals of the decisions made by the Publications Review Board concerning the deletions made in materials which are submitted to the Board for review. Presently, the only means available for challenging the Board's decision is to proceed with publication and invite judicial review. Perhaps this function could be undertaken by the Agency's Information Review Committee which presently hears appeals of FOI requests.

17. Finally, the group recommends that each person who is separated from the Agency be offered a copy of his or her secrecy agreement, for personal retention, whenever it is

practicable to do so. This would help emphasize the continuing applicability of the agreement. The Agency's termination secrecy reminder should then be amended accordingly.



ST

Attachments

SECRECY AGREEMENT

1. I, _____ (print full name), hereby agree to accept as a prior condition of my being employed or otherwise retained to perform services for the Central Intelligence Agency, or for staff elements of the Office of the Director of Central Intelligence, (hereinafter collectively referred to as the "Central Intelligence Agency"), the obligations contained in this agreement.

2. I understand that in the course of my employment or other service with the Central Intelligence Agency I may be given access to information which is classified in accordance with the standards set forth in Executive Order 12065 as amended or superseded, or classified pursuant to statute, or which reveals sensitive intelligence sources and methods. I accept that by being granted access to such information I will be placed in a position of special confidence and trust and become obligated to protect the information from unauthorized disclosure.

3. In consideration for being employed or otherwise retained to provide services to the Central Intelligence Agency, I hereby agree that I will never divulge in any form or any manner any information which is classified pursuant to statute or executive order or which reveals sensitive intelligence sources and methods, which I have obtained during the course of my employment or other service with the Central Intelligence Agency, to any person not authorized by the Central Intelligence Agency to receive it. I understand that the burden will be upon me to learn whether information or materials within my control are considered by the Central Intelligence Agency to be classified or to reveal sensitive intelligence sources and methods, and whom the Agency has authorized to receive it.

4. I hereby agree to submit for review by the Central Intelligence Agency all information or materials including works of fiction which contain any mention of intelligence data or activities, or contain other data which may be based upon information classified pursuant to executive order or statute, or which may reveal sensitive intelligence sources or methods, and which I contemplate disclosing publicly or which I have actually prepared for public disclosure, either during my employment or other service with the Central Intelligence Agency or at any time thereafter, prior to discussing it with or showing it to anyone who is not authorized to have access to classified information. I understand

that the purpose of submitting such material to the Central Intelligence Agency is to give the Agency an opportunity to determine whether it contains classified information or may reveal sensitive intelligence sources or methods obtained by me in the course of my employment. I further understand that it is my responsibility to submit all such materials, even though I am convinced that they contain no such information. I agree that I will not take any steps toward public disclosure until I have received written permission to do so from the Central Intelligence Agency. I understand that the Agency will act upon any materials I submit and make a response to me within a reasonable period of time.

5. I further understand that all information which I may acquire in the course of my employment or other service with the Central Intelligence Agency which is classified or which reveals sensitive intelligence sources or methods will remain the property of the United States Government. I agree to surrender all such materials which may have come into my possession or for which I am responsible because of my employment or other service with the Central Intelligence Agency, upon demand by an appropriate official of the Central Intelligence Agency, or upon the conclusion of my employment or other service with the Central Intelligence Agency.

6. I hereby agree to notify the Central Intelligence Agency immediately in the event that I am called upon by judicial or congressional authorities to testify about, or, provide, information which I have agreed herein not to disclose.

7. I understand that any breach of this agreement by me may result in the Central Intelligence Agency taking administrative action against me, which can include temporary loss of pay or termination of my employment or other service with the Central Intelligence Agency. I have been informed that if I violate the terms of this agreement, the United States Government may institute a civil proceeding to seek compensatory damages or other appropriate relief. I have also been informed that the unauthorized disclosure of classified information can, in some circumstances, constitute a criminal offense.

8. I understand that the United States Government may, prior to any unauthorized disclosure which is threatened by me, choose to apply to any appropriate court for an order enforcing this agreement. Nothing in this agreement constitutes a waiver on the part of the United States to institute a civil or criminal proceeding for any breach of this agreement by me. Nothing in this agreement constitutes a waiver

on my part of any possible defenses I may have in connection with either civil or criminal proceedings which may be brought against me. Nothing in this agreement limits in any way any of the legal rights, responsibilities, or privileges which may exist for either party under the Constitution or laws of the United States.

9. I understand and accept that, unless I am provided a written release from this agreement or any portion of it by the Director of Central Intelligence or the Director's representative, all the conditions and obligations accepted by me in this agreement apply both during my employment or other service with the Central Intelligence Agency, and at all times thereafter.

10. Each section of this agreement is severable. If a court should find any section of this agreement to be unenforceable, I understand that all other sections of the agreement shall remain in full force.

11. I make this agreement in good faith, and with no purpose of evasion.

Signature

Date

WITNESS:

Signature

Printed Name

Date

SECRECY AGREEMENT

1. I, _____ (print full name), hereby agree to accept as a prior condition of my being employed or otherwise retained to perform services for the Central Intelligence Agency, or for staff elements of the Office of the Director of Central Intelligence (hereinafter collectively referred to as the "Central Intelligence Agency"), the obligations contained in this agreement.

Comment: Paragraph 1 involves two major points. First, it makes clear that the person who is to sign the agreement accepts the obligations contained in the agreement as a condition of being accepted for a relationship with the Agency, and does so before that relationship is actually formed. Second, this and succeeding paragraphs reflect an attempt to fashion one agreement which will serve as many different Agency applications as possible. By using the term "employed or otherwise retained to perform services" the intention is to make the agreement usable in nearly all cases where the Agency provides compensation for a service performed - staff employees, contract employees, independent contractors, consultants, and military detailees. With minor language changes throughout, the agreement might be suitable for use by a contractor organization with whom the Agency is associated. The agreement is not suitable for use either with agents in the field or with a volunteer - for example an eminent and public-spirited academician who serves on a review panel on an unpaid basis. The language "... or for staff elements of the Office of the Director of Central Intelligence" is intended to make this agreement applicable to persons serving on the Intelligence Community Staff, or in the Office of the Director of Central Intelligence.

If this proposed agreement is adopted, a logical next step would be to consider whether to draft new agreements to cover the circumstances where this agreement is not applicable, or to continue with the agreements now used in those circumstances.

2. I understand that in the course of my employment or other service with the Central Intelligence Agency I may be given access to information which is classified in accordance with the standards set forth in Executive Order 12065 as amended or superseded, or classified pursuant to statute, or which reveals sensitive intelligence sources and methods. I accept that by being granted access to such information I will be placed in a position of special confidence and trust and become obligated to protect the information from unauthorized disclosure.

Comment: This paragraph makes the first mention in the agreement of a topic upon which the working group has remained sharply divided -- the relationship between classified information and intelligence sources and methods. In sum, the question is whether intelligence sources and methods constitute one element of classified information, or whether intelligence sources and methods constitute a separate category of information, which can be withheld from disclosure on that basis alone, independent of the classification system.

This issue, and the difference of opinion which it reflects, have a direct and fundamental effect upon the scope of the obligation which the Agency expects an individual to undertake in signing the agreement, and the extent to which the agreement is enforceable. In a formulation where intelligence sources and methods are represented as a category different from and additional to classified information, the individual is obligated to protect not only classified information, which has been officially so designated in accordance with recognized standards and is so marked and can be so identified, but also the additional category of intelligence sources and methods which is not always classified, for which no standards exist, which is not always so marked and is not readily identifiable as such.

The DDO representatives to the working group believe that a separate basis of protection is necessary and can be justified and enforced, and they believe the agreement should reflect that fact. The OGC representative believes that classification is the only judicially-recognized basis on which to withhold information from public disclosure in the circumstances contemplated here, and the agreement should be drawn accordingly. The remainder of the working group holds a common viewpoint. They prefer the broader coverage which the DDO position represents, so long as that language does not render the agreement unenforceable.

This paragraph (and several succeeding paragraphs which are germane to this issue) is presently shown in language reflecting the DDO viewpoint. The OGC representative would change the language in the agreement which refers to the quantum of information to be protected, to read "... classified information, including sensitive intelligence sources and methods"

The OGC representative bases his position primarily on the opinion rendered in United States v. Marchetti,¹

¹/ 466 F2d 1309 (4th Cir, 1972).

and also upon the fact that no comprehensive and definitive standards exist for the identification and designation of intelligence sources or methods. In the Marchetti opinion, the court specifically limited the applicability of Marchetti's secrecy agreement to classified information. In developing its position the court stated:

We would decline enforcement of the secrecy oath signed when [Marchetti] left the employment of the CIA to the extent that it purports to prevent disclosure of unclassified information, for, to that extent, the oath would be in contravention of his First Amendment rights. (emphasis added)²

In summarizing its opinion, the court held:

[The secrecy agreement] provision for submission of material to the CIA for approval prior to publication is enforceable, provided the CIA acts promptly upon such submissions and withholds approval of publication only of information which is classified and which has not been placed in the public domain by prior disclosure

The issue will be remanded however for the purpose of revising [the district court's injunctive] order to limit its reach to classified information. (emphasis added)³

As revised, the district court's order enjoined only the disclosure of:

1) any classified information relating to intelligence activities, [or] (2) any classified information concerning intelligence sources and methods; (emphasis added)⁴

The order provided further:

... that this Injunction shall apply only with respect to classified information obtained by said defendant during the course of his employment under the aforesaid secrecy agreement and which has not been placed in the public domain by prior disclosure by the United States; (emphasis added)⁵

2/ Id. at 1317.

3/ Id. at 1318.

4/ Permanent Injunction and Final Order, United States v. Marchetti, Civil Action 179-72-A, (D.C.E.D.Va., 15 March 1973)

5/ Id.

The order concluded by directing that Marchetti must submit certain types of manuscript materials to the Central Intelligence Agency in advance of publication:

... for the purpose of avoiding inadvertent disclosure of classified information (emphasis added) ⁶

More recently, in United States v. Snepp, the district court similarly limited the reach of its injunctive order, stating therein:

[T]he only material for which approval for publication may be withheld by the [Central Intelligence] Agency is that material which the Agency determines to be classified. (emphasis added) ⁷

If an attempt is to be made in the proposed secrecy agreement to protect intelligence sources and methods per se, exclusive of the classification system, the OGC representative believes that the lack of definitive standards pertaining to intelligence sources and methods poses a serious problem. There is not now in existence (nor apparently has there ever been) a comprehensive and definitive system for the designation, handling, marking and protection of intelligence sources and methods. Thus, if intelligence sources and methods is to be treated as a separate category of information in the proposed secrecy agreement, the person signing the agreement would be subjected to prior restraint with respect to a body of information which cannot be precisely identified by the individual, which has not been authoritatively designated as such, which is often not marked as such, and for which no definitive policy and procedures exist.

The OGC representative believes that an attempt to restrain publication of such an amorphous category of information would be constitutionally defective and would possibly jeopardize the enforceability of the agreement.

The United States Supreme Court has addressed this point on a number of occasions. In Saia v. New York the court held that a loudspeaker ordinance was "... unconstitutional on its face, for it establishes a previous restraint on the right of free speech in violation of the First Amendment To use a loudspeaker or amplifier one has to get a permit from the Chief of Police. There are no standards prescribed for the exercise of his discretion." ⁸

^{6/} Id.

^{7/} Order, United States v. Snepp, Civil Action 78-92-A (D.C.E.D.Va., 2 Aug 1978).

^{8/} 334 U.S. 558, 559-560; 68 S.Ct. 1148; 92L.Ed. 1574 (1948).

In Niemotko v. Maryland the court stated:

In those [previously cited] cases this Court condemned statutes and ordinances which required that permits be obtained from local officials as a prerequisite to the use of public places, on the grounds that a license requirement constitutes a prior restraint on freedom of speech, press and religion, and, in the absence of narrowly drawn reasonable and definite standards for the officials to follow, must be invalid.⁹

In Kunz v. New York the court held as follows:

It is sufficient to say that New York cannot vest restraining control over the right to speak on religious subjects in an administrative official where there are no appropriate standards to guide his action.¹⁰

And, in Shuttlesworth v. Birmingham the court stated, with respect to an ordinance requiring a parade permit:

This ordinance as it was written, therefore, fell squarely within the ambit of the many decisions of this Court over the last 30 years, holding that a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional. 'It is settled by a long line of recent decisions of this Court that an ordinance which, like this one, makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official - as by requiring a permit or license which may be granted or withheld in the discretion of such official - is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms.' Staub v. Baxley, 355 U.S. 313, 322. And our decisions have made clear that a person faced with such an unconstitutional licensing law may ignore it and engage with impunity in the exercise of the right of free expression for which the law purports to require a license.¹¹

Several other points are also addressed in paragraph two of the agreement. The person is given to understand that he or she may be given access to classified information

^{9/} 340 U.S. 268, 271; 71 S.Ct. 325; 95 L.Ed. 267 (1951)

^{10/} 340 U.S. 290, 295; 71 S.Ct. 312; 95 L.Ed. 280 (1951)

^{11/} 394 U.S. 147, 150-151; 89 S.Ct. 935; 22 L.Ed. 162 (1969)

rather than will be, as the present agreement states. This should avoid any claim to guaranteed access by the person, in return for entering into the agreement. This paragraph also allows for the fact that Executive Order 12065, which governs classification, may ultimately be superseded, as with Executive Order 11652. The language also takes cognizance of information which is classified pursuant to statute (Atomic Energy information). Finally, the person is called upon to acknowledge the position of special trust which is created by the Agency granting him or her access to classified information, and accept the obligation to protect it.

3. In consideration for being employed or otherwise retained to provide services to the Central Intelligence Agency, I hereby agree that I will never divulge in any form or any manner any information which is classified pursuant to statute or executive order or which reveals sensitive intelligence sources and methods, which I have obtained during the course of my employment or other service with the Central Intelligence Agency, to any person not authorized by the Central Intelligence Agency to receive it. I understand that the burden will be upon me to learn whether information or materials within my control are considered by the Central Intelligence Agency to be classified or to reveal sensitive intelligence sources and methods, and whom the Agency has authorized to receive it.

Comment: Paragraph 3 sets out two central points, both of which are key to the agreement. First, the prospective employee agrees never to disclose a certain category of information without being authorized to do so. Second, that category of information is described. It consists of classified information which the employee has obtained during the course of employment or other Agency service. These are the criteria which the Marchetti court seized upon for information which can properly be withheld from unauthorized disclosure. As noted above, in its present form the agreement also incorporates the additional category of intelligence sources and methods. The nondisclosure language has been broadened, to address all means of disclosure - oral, written, by means of gesture, etc. It is intended that, by using the term "... [classified information] obtained in the course of my employment" the prohibition against disclosure would not be limited to that information for which access is deliberately and officially granted, but would extend to the circumstance of inadvertent or unofficial access - where the employee has come into actual possession of information because of his or her association with the Agency, but it is information to which access was not officially granted.

Additionally, this paragraph specifically sets forth the concept of consideration - the idea that something is being given the person in return for the person's promise.

not to disclose classified information without proper authorization - in order to emphasize that this agreement is a contractual undertaking. In this case, that which is given by the Agency is employment (or compensation for another form of service with the Agency).

The approach taken in the latter part of this paragraph is to avoid any problems of the Director seeming to authorize unauthorized disclosures (see paragraph 3 of the present agreement), problems of the employee or ex-employee trying to determine what information is classified, who is authorized to receive it, and what is meant by "authorized." The language used in this paragraph is intended to make it clear that an "authorized" person is not necessarily any person who has been granted the requisite clearances.

4. I hereby agree to submit for review by the Central Intelligence Agency all information or materials including works of fiction which contain any mention of intelligence data or activities, or contain other data which may be based upon information classified pursuant to executive order or statute, or which may reveal sensitive intelligence sources or methods, and which I contemplate disclosing publicly or which I have actually prepared for public disclosure, either during my employment or other service with the Central Intelligence Agency or at any time thereafter, prior to discussing it with or showing it to anyone who is not authorized to have access to classified information. I understand that the purpose of submitting such material to the Central Intelligence Agency is to give the Agency an opportunity to determine whether it contains classified information or may reveal sensitive intelligence sources or methods obtained by me in the course of my employment. I further understand that it is my responsibility to submit all such materials to the Agency, even though I am convinced that they contain no such information. I agree that I will not take any steps toward public disclosure until I have received written permission to do so from the Central Intelligence Agency. I understand that the Agency will act upon any materials I submit and make a response to me within a reasonable period of time.

Comment: Paragraph 4 concerns the body of information which a person agrees to submit for review by the Agency prior to the person publishing the information.

The intention here is to place employees and ex-employees on the same footing. Those materials which are intelligence oriented or intelligence associated, or which may otherwise derive from classified information, must be submitted for review by both groups. Materials not fitting this description need not be submitted by either. The present Agency

notice notwithstanding, the group concludes that it is not reasonable or possible to require that a present employee submit everything that he or she prepares for publication, and that an agreement which purports to require such is probably not enforceable. If this requirement were enforced literally and vigorously, it would require the submission, for example, of such things as church or hobby group newsletters which the employee prepares, and classified ads placed by the employee in newspapers or magazines.

This paragraph makes specific mention of fictional material which is not mentioned in present or past agreements. It also attempts to better identify the substantive elements which constitute information that must be submitted, and requires that "any mention" of such information is sufficient to require that the materials be submitted.

The person is obligated to submit materials of the designated type either while associated with the Agency or at any time thereafter.

The language also obligates the person signing the agreement to refrain from disclosing materials containing the designated subject matter which are contemplated or actually prepared for public disclosure, to anyone not authorized access to classified information prior to submitting the materials to the Agency for review. The reference to persons authorized access to classified information places a greater limitation upon advance disclosure by the would-be author than does the present agreement, which mentions only publishers, editors, and literary agents.

The latter portion of the paragraph requires the person signing to acknowledge the purpose of the Agency review, and to indicate understanding that the designated materials must be submitted even when classified content is arguable. It also requires the person to await written permission from the Agency before proceeding.

5. I further understand that all information which I may acquire in the course of my employment or other service with the Central Intelligence Agency which is classified or which reveals sensitive intelligence sources or methods will remain the property of the United States Government. I agree to surrender all such materials which may have come into my possession or for which I am responsible because of my employment or other service with the Central Intelligence Agency, upon demand by an appropriate official of the Central Intelligence Agency, or upon the conclusion of my employment or other service with the Central Intelligence Agency.

Comment: Paragraph 5 serves to indicate understanding by the person signing that the person acquires no property interest in the classified information he or she becomes exposed to, that interest remaining with the government.

This paragraph also makes clear that the person must surrender all classified materials possessed by him or her or for which he or she is responsible, upon demand or upon departure from the Agency.

6. I hereby agree to notify the Central Intelligence Agency immediately in the event that I am called upon by judicial or congressional authorities to testify about, or provide, information which I have agreed herein not to disclose.

Comment: Self-explanatory.

7. I understand that any breach of this agreement by me may result in the Central Intelligence Agency taking administrative action against me, which can include temporary loss of pay or termination of my employment or other service with the Central Intelligence Agency. I have been informed that if I violate the terms of this agreement, the United States Government may institute a civil proceeding to seek compensatory damages or other appropriate relief. I have also been informed that the unauthorized disclosure of classified information can, in some circumstances, constitute a criminal offense.

Comment: This paragraph contains the only mention of "sanctions" in the proposed agreement. It puts the person who is to sign the agreement on notice that the Agency can take administrative action if the agreement is breached, including loss of pay or termination, and that the government may, when it seems appropriate, bring a civil suit for compensatory damages or other relief. It also informs the person that certain unauthorized disclosures constitute a criminal offense.

With respect to civil sanctions, consideration was given to the inclusion of a liquidated damages clause in the agreement. No such clause is included, however. While courts generally uphold the concept of liquidated damages as such, they generally do not uphold a contract containing a clause which is represented as liquidated damages but which may in fact be, or may be found by the court to be, a penalty clause or a forfeiture. Courts generally consider several factors in determining whether a clause represents liquidated damages or a penalty - whether the amount shown is reasonably related to the amount of damage which can be expected to result from a breach of the agreement, and whether the

parties have in fact agreed that such an amount is reasonable. Of course in the proposed application, it is extremely difficult to arrive at a reasonable figure since it cannot be determined in advance what form the breach (unauthorized disclosure) will take or what will actually be disclosed. Moreover, the newly-arrived applicant who is to sign this agreement would generally have no idea of what is involved insofar as measure of damages is concerned and thus be in no position to meaningfully agree to any figure which is proposed.

And, of course, in litigating any damage suit, the Agency must generally expect to disclose even more information in attempting to justify its position with respect to the information already disclosed.

Consideration was also given to the inclusion of a clause whereby the person signing the agreement would assign to the United States Government all financial gain resulting from a violation of the agreement. No example has been discovered in the literature where such an approach has been utilized. Thus, the enforceability of such a clause cannot be determined firsthand. Notwithstanding the fact that such a clause is included in several of the secrecy agreements utilized by congressional committee staff personnel, the OGC representative believes there is a substantial possibility that such a clause would be regarded by the courts as a forfeiture or a penalty rather than an attempt by the government to obtain an appropriate measure of compensation for damages suffered. Of course if the provision were so regarded, it would undoubtedly not be enforced. There was reluctance to knowingly include in the agreement a provision where some doubt existed as to its enforceability, even though the presence of a severability provision in the agreement would act to limit the effect if the assignment provision were declared void.

With respect to the matter of criminal offenses, rather than requiring that the prospective employee read (and presumably understand) the so-called espionage laws, the approach taken is to simply inform the prospective employee that disclosure of classified information can, in some circumstances, constitute a criminal offense, and have the person acknowledge that he or she has been so informed.

8. I understand that the United States Government may, prior to any unauthorized disclosure which is threatened by me, choose to apply to any appropriate court for an order enforcing this agreement. Nothing in this agreement constitutes a waiver on the part of the United States to institute a civil or criminal proceeding for any breach of this agreement by me. Nothing in this agreement constitutes a waiver

on my part of any possible defenses I may have in connection with either civil or criminal proceedings which may be brought against me. Nothing in this agreement limits in any way any of the legal rights, responsibilities, or privileges which may exist for either party under the Constitution or laws of the United States.

Comment: Self-explanatory.

9. I understand and accept that, unless I am provided a written release from this agreement or any portion of it by the Director of Central Intelligence or the Director's representative, all the conditions and obligations accepted by me in this agreement apply both during my employment or other service with the Central Intelligence Agency, and at all times thereafter.

Comment: This paragraph puts the prospective employee on notice that the agreement is a life-time agreement, unless he or she is released from it by the DCI or the DCI's representative.

Some consideration was given to an agreement which lasted only a period of years, or which became increasingly permissive over a period of time. These approaches were rejected for two reasons. First, the national interests which are sought to be protected by the use of such an agreement generally continue to need protection for long periods of time. At least some of the knowledge gained by a prospective employee could (and frequently would) continue to be damaging throughout that person's lifetime - the identity of a foreign intelligence source, for example. And second, an arrangement whereby the person involved was entitled to make more and more judgments over a period of time would very quickly become impossible for the Agency to monitor and would quickly lead to the compromise of information still requiring protection.

10. Each section of this agreement is severable. If a court should find any section of this agreement to be unenforceable, I understand that all other sections of the agreement shall remain in full force.

Comment: This section is included to help insure that a judicial finding that one or more clauses of the agreement are not enforceable would not necessarily void the entire agreement. The paragraph also serves to demonstrate the prospective employee's understanding that the agreement is to be so considered.

11. I make this agreement in good faith, and with no purpose of evasion.

Signature

Date

WITNESS:

Signature

Printed Name

Date

Comment: This paragraph is largely self-explanatory. The use of the term "mental reservation" is deliberately avoided, for two reasons. First, it is probably more important that the prospective employee indicate a sense of good faith in making the agreement. Second, most people probably are not so insensitive as to have no reservations about accepting such obligations. That is not to suggest that they undertake the obligations falsely, but rather that they feel some concern for the limitations and inconvenience which are thereby placed upon them for the rest of their lives.

PREAMBLE

The Congress of the United States has placed a responsibility on the Director of Central Intelligence to protect intelligence and intelligence sources and methods from unauthorized disclosure. In accepting employment with the Central Intelligence Agency I recognize the special trust and confidence placed in me by the Agency to protect classified information from unauthorized disclosure.

ENTRANCE ON DUTY SECRECY AGREEMENT

1. I, _____, hereby agree to accept as a condition precedent of my employment with the Central Intelligence Agency the specific obligations set forth below.
2. It is my understanding that in the course of my employment with the Central Intelligence Agency I will be given access to information which is classified in accordance with the standards set forth in Executive Order 11652 of March 8, 1972, as amended. All classified information so acquired by me in the course of my employment remains the property of the United States of America and I further agree to surrender upon demand by an appropriate official of the Central Intelligence Agency, or upon my separation from the CIA, any classified material which has come into my possession as a result of my employment with the Central Intelligence Agency.
3. I hereby agree that I will never divulge, publish or reveal by writing, word, conduct or otherwise any classified information, including CIA cover arrangements, to any unauthorized person without prior consent of the Director of Central Intelligence or his representative. I further agree that any material which is related to intelligence or intelligence sources and methods and prepared for publication by me will be submitted to the Central Intelligence Agency prior to discussing with or showing to any publishers, editors or literary agents for the purpose of determining whether said material contains any classified information as defined in Executive Order 11652. I agree that the Central Intelligence Agency has the authority to make the final determination as to whether information is classified and thus should be deleted from the material submitted.
4. I have read the provisions of the espionage laws (sections 793, 794 and 798 of Title 18, United States Code) and I am aware that unauthorized disclosure of classified information relating to the national defense may subject me to prosecution for violation of those laws. I have read the National Security Act of 1947 which specifically places a responsibility on the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure.

5. I further agree to keep myself thoroughly familiar with, and to comply with, applicable CIA security procedures and regulations. I understand that the burden is upon me to ascertain if the information is classified and who is authorized to receive it, pursuant to applicable security regulations.

6. I understand that any breach on my part of the obligations contained in this agreement could subject me to administrative action, including termination of my employment. I further agree that all the conditions and obligations imposed on me with respect to the protection of classified information by this agreement and applicable Agency regulations apply during my employment and continue after that relationship has terminated.

7. I take the obligations set forth above freely without any mental reservations or purpose of evasion.

SIGNATURE

DATE

WITNESS:

SIGNATURE

DATE